



FOR CLERK USE ONLY
City Council
Item No. 22

CITY COUNCIL AGENDA FACT SHEET

Community Development Svc.

Department

February 2, 2010

Requested Date

1. Request:

Council Approval

☒Information Only/
Presentation☐

Other (specify)

☐

Hearing

☐

2. Requested Action:

Hold Public Hearing and receive input. Approve: (1) Adopt resolution decertifying EIR 2009-01 & rescinding approval of tentative subdivision map 2009-01 for Mega Park project (2) Adopt resolution amending general plan land use designation for Mega Park property. (3) Perform first reading by title and waive full reading of ordinance to rezone the Meganark Property.

3. Fiscal Impact:

Revenue:

Increase

☐

Source:

Decrease

☐

Amount:

\$

Cost:

Increase

☐

Source:

N/A

Decrease

☐

Amount:

\$

Does Not Apply ☒

4. Reviewed By:

Finance Dept. on

By:

Comments:

City Attorney on

By:

Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify)

☐

Reviewed by: City Clerk

Date

City Manager

Date

**CITY COUNCIL
AGENDA REPORT**

SUBJECT: CONTINUED PUBLIC HEARING RE: CONSIDERATION TO (1) RESCIND ALL ENTITLEMENTS FOR THE MEGAPARK PROJECT; (2) AMEND THE GENERAL PLAN TO CHANGE THE LAND-USE DESIGNATION FOR THE MEGAPARK PROPERTY; AND (3) REZONE THE MEGAPARK PROPERTY TO BE CONSISTENT WITH THE GENERAL PLAN.

AGENDA DATE: February 2, 2010

**PREPARED BY: Jennifer M. Lyon, City Attorney
Armando Villa, Community Development Director**

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Hold public hearing and receive input. Approve the following:

- (1) Adopt a Resolution Decertifying EIR 2009-01 and Rescinding Approval of Tentative Subdivision Map 2009-01 for the Megapark Project;
- (2) Adopt a Resolution Amending the General Plan Land Use Designation for the Megapark Property; and
- (3) Perform first reading by title only and waive full reading of an Ordinance to Rezone the Megapark Property.

FISCAL IMPACT: N/A

ENVIRONMENTAL REVIEW: On May 1, 2007, by Resolution 07-83, the City Council certified an Environmental Impact Report, adopted a Statement of Overriding Considerations and adopted the 2007 General Plan Update. The proposed zoning amendment is consistent with, and implements the land use designations and regulations identified in the 2007 General Plan and analyzed in the General Plan EIR. Therefore, pursuant to CEQA Guidelines sections 15162, 15168 and 15183, no further environmental review is required. This action is being taken to rescind the land-use entitlement approvals for the Megapark development project, therefore this proposed action will have significantly less environmental effects than the formerly proposed development of approximately 155 acres of the Megapark project.

BACKGROUND INFORMATION: (Prior action/information)

Calexico Mega Park, LLC, on August 18, 2009, obtained approvals and entitlements to develop a mixed commercial project on APNs 059-001-002 and 059-001-003. On December 1, 2009, Calexico Mega Park, LLC requested the City rescind all approvals and entitlements for the Mega Park project including: the decertification of EIR 2009-01;

rescinding General Plan Amendment 2007-10; rescinding Zone Change 2007-03; and vacating its approval of Tentative Subdivision Map 2009-01.

DISCUSSION (Current consideration):

The action before the Council is to approve the attached resolutions and ordinance which will have the effect of completely rescinding all entitlements that were previously granted to the Megapark project. The proposed actions would also restore the previous General Plan land use designation that Megapark held prior to August 18, 2009. Further, the proposed rezone via an ordinance will properly zone the Megapark land to be in conformance with the former land use designations of Commercial Highway (approximately 25 acres) and Medium Density Residential (approximately 130 acres). Any proposed future development on the site would require appropriate environmental review and land use approvals.

1. EIR.

The attached draft resolution that would have the effect of de-certifying the EIR.

2. Tentative Subdivision Map.

The attached draft resolution that would have the effect of rescinding the tentative subdivision map and conditions of approval that were created on August 18, 2009 for the Megapark project. Once approved, the only condition of the former resolution that would remain is the obligation that the Megapark applicant defend and indemnify the City Calxico from any lawsuits related to the project, including this current action to rescind the project entitlements.

3. General Plan Amendment.

The attached draft resolution that would have the effect of rescinding General Plan Amendment 2007-10 that changed the land use designation on approximately 130 acres of the Megapark site from Medium Density Residential ("MDR") to Commercial Highway ("CH"). The proposed resolution would further restore the former land use designation so that approximately 130 acres are designated as MDR and approximately 25 acres are designated as CH. The proposed land use designations are consistent with the General Plan and EIR that were approved in 2007 by the City.

Section 65358(a) of the Government Code provides that no mandatory element of a General Plan shall be amended more frequently than four times during any calendar year and this proposed General Plan Amendment No. 2009-02 constitutes the first amendment to a mandatory element of the City's General Plan for calendar year 2010.

4. Zone Change.

Prior to the August 18, 2009 project approvals, the Megapark land which is approximately 155 acres of land generally located on the southeast quadrant of Jasper Road and Highway 111 further described as APNs 059-001-002 and 059-001-003 was zoned IND, General Industrial which is different from the land use designation in the General Plan. On August 18, 2009, Council took action to rezone all 155 acres to CH, Commercial Highway. With the request to rescind all project entitlements, the rezone to

CH will also be rescinded. To make the zoning consistent with the General Plan land use designation, the proposed ordinance will rezone the 155 acres from CH to 25 acres as CH and 130 acres as R-2. The R-2 zone was created to implement the General Plan land use designation of MDR. Therefore, once Council takes action to approve all attached resolution and the ordinance, the Megapark land will have a land use and zoning designation which are consistent with the General Plan.

The proposed General Plan Amendment and Zone Change are consistent with the General Plan and the Housing Element. The City Council adopted the 2007 General Plan Update by Resolution No. 07-83 on May 1, 2007. The General Plan discusses a land use category called Medium Density Residential and designates certain land within the City (including the Megapark land) within such category. The proposed actions will restore the Megapark land to the land use designation that existed prior to August 18, 2009 and zone the land consistent with such designations.

The Planning Commission considered this matter on January 4, 2010 and recommended that the Council approve the attached resolutions and ordinance. After the Planning Commission approved this matter, the City sent the required notice to adjacent property owners and published notice of this meeting as required by law.

This public hearing was set for January 19, 2010. At the request of the Megapark developer, this public hearing was continued to February 2, 2010. Therefore, the public hearing was opened on January 19 and continued to February 2.

- **Recommendation:** It is recommended that the City Council hold the continued public hearing and approve the following:
 - (1) Adopt a Resolution Decertifying EIR 2009-01 and Rescinding Approval of Tentative Subdivision Map 2009-01 for the Megapark Project;
 - (2) Adopt a Resolution Amending the General Plan Land Use Designation for the Megapark Property; and
 - (3) Perform the first reading of the Ordinance by title only to Rezone the Megapark Property.


Attachments:

- 1. City Council Resolution re: Decertification of EIR and Tentative Map**
- 2. City Council Resolution re: General Plan Amendment**
- 3. City Council Ordinance re: Zone Change**
- 4. 12/1/09 Letter from Megapark**
- 5. Planning Commission Staff Report**
- 6. Planning Commission Resolution**

**CITY COUNCIL
AGENDA REPORT**

SUBJECT: PUBLIC HEARING RE: CONSIDERATION TO (1) RESCIND ALL ENTITLEMENTS FOR THE MEGAPARK PROJECT; (2) AMEND THE GENERAL PLAN TO CHANGE THE LAND-USE DESIGNATION FOR THE MEGAPARK PROPERTY; AND (3) REZONE THE MEGAPARK PROPERTY TO BE CONSISTENT WITH THE GENERAL PLAN.

AGENDA DATE: January 19, 2010

PREPARED BY: Jennifer M. Lyon, City Attorney 
Armando Villa, Community Development Director

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Hold public hearing and receive input. Approve the following:

- (1) Adopt a Resolution Decertifying EIR 2009-01 and Rescinding Approval of Tentative Subdivision Map 2009-01 for the Megapark Project;
- (2) Adopt a Resolution Amending the General Plan Land Use Designation for the Megapark Property; and
- (3) Perform first reading by title only and waive full reading of an Ordinance to Rezone the Megapark Property.

FISCAL IMPACT: N/A

ENVIRONMENTAL REVIEW: On May 1, 2007, by Resolution 07-83, the City Council certified an Environmental Impact Report, adopted a Statement of Overriding Considerations and adopted the 2007 General Plan Update. The proposed zoning amendment is consistent with, and implements the land use designations and regulations identified in the 2007 General Plan and analyzed in the General Plan EIR. Therefore, pursuant to CEQA Guidelines sections 15162, 15168 and 15183, no further environmental review is required. This action is being taken to rescind the land-use entitlement approvals for the Megapark development project, therefore this proposed action will have significantly less environmental effects than the formerly proposed development of approximately 155 acres of the Megapark project.

BACKGROUND INFORMATION: (Prior action/information)

Calexico Mega Park, LLC, on August 18, 2009, obtained approvals and entitlements to develop a mixed commercial project on APNs 059-001-002 and 059-001-003. On December 1, 2009, Calexico Mega Park, LLC requested the City rescind all approvals and entitlements for the Mega Park project including: the decertification of EIR 2009-01;

rescinding General Plan Amendment 2007-10; rescinding Zone Change 2007-03; and vacating its approval of Tentative Subdivision Map 2009-01.

DISCUSSION (Current consideration):

The action before the Council is to approve the attached resolutions and ordinance which will have the effect of completely rescinding all entitlements that were previously granted to the Megapark project. The proposed actions would also restore the previous General Plan land use designation that Megapark held prior to August 18, 2009. Further, the proposed rezone via an ordinance will properly zone the Megapark land to be in conformance with the former land use designations of Commercial Highway (approximately 25 acres) and Medium Density Residential (approximately 130 acres). Any proposed future development on the site would require appropriate environmental review and land use approvals.

1. EIR.

The attached draft resolution that would have the effect of de-certifying the EIR.

2. Tentative Subdivision Map.

The attached draft resolution that would have the effect of rescinding the tentative subdivision map and conditions of approval that were created on August 18, 2009 for the Megapark project. Once approved, the only condition of the former resolution that would remain is the obligation that the Megapark applicant defend and indemnify the City Calexico from any lawsuits related to the project, including this current action to rescind the project entitlements.

3. General Plan Amendment.

The attached draft resolution that would have the effect of rescinding General Plan Amendment 2007-10 that changed the land use designation on approximately 130 acres of the Megapark site from Medium Density Residential ("MDR") to Commercial Highway ("CH"). The proposed resolution would further restore the former land use designation so that approximately 130 acres are designated as MDR and approximately 25 acres are designated as CH. The proposed land use designations are consistent with the General Plan and EIR that were approved in 2007 by the City.

Section 65358(a) of the Government Code provides that no mandatory element of a General Plan shall be amended more frequently than four times during any calendar year and this proposed General Plan Amendment No. 2009-02 constitutes the first amendment to a mandatory element of the City's General Plan for calendar year 2010.

4. Zone Change.

Prior to the August 18, 2009 project approvals, the Megapark land which is approximately 155 acres of land generally located on the southeast quadrant of Jasper Road and Highway 111 further described as APNs 059-001-002 and 059-001-003 was zoned IND, General Industrial which is different from the land use designation in the General Plan. On August 18, 2009, Council took action to rezone all 155 acres to CH, Commercial Highway. With the request to rescind all project entitlements, the rezone to

CH will also be rescinded. To make the zoning consistent with the General Plan land use designation, the proposed ordinance will rezone the 155 acres from CH to 25 acres as CH and 130 acres as R-2. The R-2 zone was created to implement the General Plan land use designation of MDR. Therefore, once Council takes action to approve all attached resolution and the ordinance, the Megapark land will have a land use and zoning designation which are consistent with the General Plan.

The proposed General Plan Amendment and Zone Change are consistent with the General Plan and the Housing Element. The City Council adopted the 2007 General Plan Update by Resolution No. 07-83 on May 1, 2007. The General Plan discusses a land use category called Medium Density Residential and designates certain land within the City (including the Megapark land) within such category. The proposed actions will restore the Megapark land to the land use designation that existed prior to August 18, 2009 and zone the land consistent with such designations.

The Planning Commission considered this matter on January 4, 2010 and recommended that the Council approve the attached resolutions and ordinance. After the Planning Commission approved this matter, the City sent the required notice to adjacent property owners and published notice of this meeting as required by law.

- **Recommendation:** It is recommended that the City Council hold the public hearing and approve the following:
 - (1) Adopt a Resolution Decertifying EIR 2009-01 and Rescinding Approval of Tentative Subdivision Map 2009-01 for the Megapark Project;
 - (2) Adopt a Resolution Amending the General Plan Land Use Designation for the Megapark Property; and
 - (3) Perform the first reading of the Ordinance by title only to Rezone the Megapark Property.

Attachments:

- 1. City Council Resolution re: Decertification of EIR and Tentative Map**
- 2. City Council Resolution re: General Plan Amendment**
- 3. City Council Ordinance re: Zone Change**
- 4. 12/1/09 Letter from Megapark**
- 5. Planning Commission Staff Report**
- 6. Planning Commission Resolution**

Agenda Item No. _____
Page _____ Of _____

RESOLUTION NO. 2010-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DECERTIFYING EIR 2009-01 AND RESCINDING APPROVAL OF TENTATIVE SUBDIVISION MAP 2009-01 RELATED TO THE CALEXICO MEGA PARK PROJECT LOCATED ON APPROXIMATELY 155 ACRES OF LAND (APNs 059-001-002 AND 059-001-003).

WHEREAS, Calexico Mega Park, LLC, on August 18, 2009, obtained approvals and entitlements to develop a mixed commercial project on APNs 059-001-002 and 059-001-003; and

WHEREAS, Calexico Mega Park, LLC has requested the City rescind all approvals and entitlements for the Mega Park project; and

WHEREAS, Calexico Mega Park, LLC now requests the City decertify EIR 2009-01, rescind General Plan Amendment 2007-10, rescind Zone Change 2007-03 and vacate its approval of Tentative Subdivision Map 2009-01; and

WHEREAS, by separate action of the City Council, the General Plan has been amended to restore the prior land use designation and the property has been rezoned consistent with the General Plan, as amended; and

WHEREAS, the Planning Commission, at its meeting on January 4, 2010, held a duly noticed public hearing, and recommended to the City Council that it decertify EIR 2009-01 and vacate approval of Tentative Subdivision Map 2009-01.

WHEREAS, public notice has been given pursuant to law, and the City Council has considered evidence presented by City staff and other interested parties at a public hearing held with respect to this item on the 19th day of January, 2010.

NOW THEREFORE, the City Council of the City of Calexico DOES HEREBY RESOLVE as follows:

1. EIR 2009-01 is decertified. From and after the effective date of this Resolution, no portion of EIR 2009-01 shall be applicable to the property. City Council Resolution No. ____ related to approval of EIR 2009-01 is hereby repealed.
2. Approval of Tentative Subdivision Map 2009-01 is vacated. The Conditions of Approval (General Condition #1 on page 3 of 20 of Resolution No. ____) which requires the applicant to defend, indemnify, and hold harmless the City shall remain in full force and effect. The Joint Defense and Indemnification Agreement effective August 18, 2009 between Megapark LLC and the City remains in full force and effect. Except as specified herein, Resolution No. ____ related to approval of Tentative Subdivision Map 2009-01 is hereby repealed.
3. Based on Megapark's 12/1/09 request to rescind all project approvals and the necessity to approve the General Plan land use designation and the rezone of the subject property, Megapark shall defend, indemnify, and hold harmless the City, its

Attachment 1

**CITY COUNCIL RESOLUTION
DECERTIFYING EIR 2009-01 AND
VACATING APPROVAL OF TSM 2009-01**

Page 2 of 3

agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to this request to rescind the Megapark project entitlements including, but not limited to, any action to attack, set aside, void, challenge, or annul the approval of the resolutions and ordinances to decertify EIR 2009-01; rescind Tentative Subdivision Map 2009-01; rescind GPA 2007-10; rescind zone change 2007-03; approval of GPA 2009-02; and approval of Zone Change 2009-02 and any corresponding environmental document or decision. The City will promptly notify applicant of any claim, action or proceeding. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant. Applicant shall enter into a Joint Defense Agreement within two weeks of the filing of any action related to the above-mentioned approvals and such Joint Defense Agreement shall provide for adequate security to be provided to the City related to Applicant's obligations thereunder.

City of Calexico

DAVID OUZAN, MAYOR

ATTEST:

LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON, CITY ATTORNEY

**CITY COUNCIL RESOLUTION
DECERTIFYING EIR 2009-01 AND
VACATING APPROVAL OF TSM 2009-01
Page 3 of 3**

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS
CITY OF CALEXICO)

I LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, CALIFORNIA DO
HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2010-____, WAS
DULY PASSED AND ADOPTED BY THE CITY OF CALEXICO ON THIS 19th DAY OF
JANUARY, 2010 BY THE FOLLOWING VOTE TO WIT:

AYES:
NOES:
ABSENT:
ABSTAIN:

LOURDES CORDOVA, CITY CLERK

SEAL

RESOLUTION NO. 2010-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CALEXICO, CALIFORNIA, APPROVING GENERAL PLAN
AMENDMENT NO. 2009-02 TO DESIGNATE APPROXIMATELY
130 ACRES OF LAND ON APNs 059-001-002 AND 059-001-003
AS MEDIUM DENSITY RESIDENTIAL (MDR).**

WHEREAS, Calexico Mega Park, LLC previously obtained an amendment to the City's General Plan which changed the designation of approximately 130 acres of property on APNs 059-001-002 and 059-001-003 from Medium Density Residential to Commercial Highway; and

WHEREAS, Calexico Mega Park, LLC has initiated proceedings to rescind the City's prior approval of entitlements for the Mega Park project; and

WHEREAS, Calexico Mega Park, LLC now requests the City amend the General Plan to change the designation of approximately 130 acres of land on APNs 059-001-002 and 059-001-003 from Commercial Highway to Medium Density Residential and to designate approximately 25 acres as Commercial Highway; and

WHEREAS, approval of the General Plan amendment will restore the designations that were applicable to the property prior to the approval of the Mega Park project on August 18, 2009; and

WHEREAS, Section 65358(a) of the Government Code provides that no mandatory element of a General Plan shall be amended more frequently than four times during any calendar year; and

WHEREAS, proposed General Plan Amendment No. 2009-02 constitutes the first amendment to a mandatory element of the City's General Plan for calendar year 2010; and

WHEREAS, the City Council of the City of Calexico has the authority to approve amendments to the City's General Plan; and

WHEREAS, the Planning Commission, at its meeting on January 4, 2010, held a duly noticed public hearing, and recommended to the City Council approval of General Plan Amendment No. 2009-02, with the adoption of Resolution No. 2009-02; and

WHEREAS, public notice of said application has been given pursuant to law, and the City Council has considered evidence presented by City staff and other interested parties at a public hearing held with respect to this item on the 19th day of January, 2010.

NOW THEREFORE, the City Council of the City of Calexico DOES HEREBY RESOLVE as follows:

1. In accordance with State Planning and Zoning law, the City's 2007 General Plan, as amended, the 2007 General Plan Environmental Impact Report, and the relevant provisions of the City of Calexico Municipal Code, and based on substantial evidence in the record, the City Council of the City of Calexico hereby makes the following findings for the approval of General Plan Amendment No. 2009-02:

Attachment 2

**CITY COUNCIL RESOLUTION FOR
GENERAL PLAN AMENDMENT NO. 2009-02**

Page 2 of 4

- a. The facts recited herein, including those appearing in the recitals, are true and correct.
- b. On May 1, 2007, by Resolution 07-83, the City Council certified an Environmental Impact Report, adopted a Statement of Overriding Considerations and adopted the General Plan Update. All findings made in support of adopting the 2007 General Plan and in certifying the General Plan EIR are hereby restated as though fully set forth herein.
- c. The General Plan designation proposed by this amendment is identical to the land use designation identified in the 2007 General Plan and analyzed in the General Plan EIR. No specific development is proposed as part of this General Plan Amendment and no new information has become available that would trigger further environmental review under Guidelines section 15162. Additionally, any future development will be required to comply with the mitigation measures contained in the Mitigation Monitoring and Reporting Plan adopted as part of the certified General Plan EIR. Therefore, pursuant to CEQA Guidelines sections 15162, 15168 and 15183, no further environmental review is required in order to approve the General Plan amendment.
- d. The change in designation of approximately 130 acres from Commercial Highway (CH) to Medium Density Residential (MDR) is consistent with the policies, goals, objectives, densities and permitted uses identified in the General Plan, as amended.
 - i. *In the 2007 General Plan, Land Use element, approximately 130 acres of the land was designated as Medium Density Residential and approximately 25 acres was designated as Commercial Highway. On August 18, 2009, the City Council amended the General Plan to change the designation of the entire 155 acres of property to Commercial Highway. General Plan Amendment 2009-02 restores the Medium Density Residential designation to approximately 130 acres. The remaining 25 acres retain the Commercial Highway designation. The proposed designations are identical to the designations of the property approved in the 2007 General Plan Update and as analyzed in the 2007 General Plan Environmental Impact Report.*
- e. Although the property is not included in the City's Housing Inventory, the restoration of the Medium Density Residential designation is consistent with the City's Housing Element.
 - i. *The permitted density, 5.1 to 12 units per acre, and the applicable provisions of the General Plan that provide greater flexibility for development of low and very low income dwelling units, encourage future project applicants to provide a mix of housing types at various levels of affordability. The addition of 130 acres to the City's residentially classified land provides an even greater opportunity to add housing units within*

**CITY COUNCIL RESOLUTION FOR
GENERAL PLAN AMENDMENT NO. 2009-02**

Page 3 of 4

various affordability ranges.

- f. The proposed General Plan Amendment No. 2009-02 will not be detrimental to the health, safety, comfort or general welfare of the persons residing or working within the neighborhood of the proposed amendment or within the City nor will it be injurious to the property or improvements in the neighborhood or within the City.
 - i. *As previously found in adopting the 2007 General Plan and, with the incorporation of applicable mitigation measures, the proposed amendment will not be detrimental to the health, safety, comfort and welfare of the persons residing or working within or near the neighborhood of the property that will be redesignated as Medium Density Residential.*
- g. The proposed General Plan Amendment No. 2009-02 will permit reasonable development of the area consistent with its constraints and will make the area more compatible with adjacent properties.
 - i. *The proposed General Plan Amendment would establish a designation consistent with the existing Commercial Highway designation to the north of the subject site. The property is in close proximity to existing and proposed commercial and retail uses and low density residential housing. The commercial and retail uses provide employment opportunities that are in close proximity to the planned residential uses. Additionally, having retail facilities, including personal retail services, in close proximity to residential neighborhoods reduces reliance on individual transportation to and from the necessary retail services.*

NOW THEREFORE, based on the above findings, BE IT FURTHER RESOVLED, the City Council of the City of Calexico, DOES HEREBY:

1. Rescind General Plan Amendment No. 2007-10 and repeal City Council Resolution No. ____ approved on August 18, 2009.
2. Approve General Plan Amendment No. 2009-02, a map of which is attached hereto as Exhibit A.

City of Calexico

DAVID OUZAN, MAYOR

**CITY COUNCIL RESOLUTION FOR
GENERAL PLAN AMENDMENT NO. 2009-02
Page 4 of 4**

ATTEST:

LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS
CITY OF CALEXICO)

I LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, CALIFORNIA DO
HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2010-____, WAS
DULY PASSED AND ADOPTED BY THE CITY OF CALEXICO ON THIS 19th DAY OF
JANUARY, 2010 BY THE FOLLOWING VOTE TO WIT:

AYES:
NOES:
ABSENT:
ABSTAIN:

LOURDES CORDOVA, CITY CLERK

SEAL

ORDINANCE NO. 2010-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, RESCINDING ZONE CHANGE NO. 2007-03 AND APPROVING ZONE CHANGE NO. 2009-02, REZONING 130 ACRES FROM COMMERCIAL HIGHWAY TO R2, A MEDIUM DENSITY RESIDENTIAL CATEGORY, AND ZONING APPROXIMATELY 25 ACRES AS COMMERCIAL HIGHWAY.

WHEREAS, Callexico Mega Park, LLC previously filed an application for a zone change from IND, General Industrial to CH, Commercial Highway zone for approximately 155 acres of land generally located on the southeast quadrant of Jasper Road and Highway 111 further described as APNs 059-001-002 and 059-001-003; and

WHEREAS, the City Council of the City of Calexico approved the requested rezone on August 18, 2009; and

WHEREAS, Callexico Mega Park, LLC has since requested that the City rescind all prior project related approvals, including the General Plan Amendment and Rezone; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 4, 2010, and recommended to the City Council approval of Zone Change No. 2009-02, amending the text of Title 17, Zoning, of the City's Municipal Code to add the R2, Medium Density Residential classification and recommending the City Council approve Zone Change No. 2009-02, rezoning approximately 130 acres to R2 and approximately 25 acres to Commercial Highway; and

WHEREAS, the notice of the public hearing for the City Council's consideration of the zoning amendments was duly published and given in accordance with applicable provisions of the California Government Code; and

WHEREAS, the City Council held a duly noticed public hearing on January 19, 2010 at which time all interested parties were given an opportunity to address the City Council on these matters; and

WHEREAS, the City Council has considered the staff report and all documents pertaining to this approval and has considered the comments of City staff, City consultants, and all other interested persons.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

In accordance with State Planning and Zoning law, the City's 2007 General Plan, as amended, the 2007 General Plan Environmental Impact Report, and the relevant provisions of the City of Calexico Municipal Code, and based on substantial evidence in the record, the City Council of the City of Calexico hereby makes the following findings for the approval of Zone Change No. 2009-02:

Attachment 3

**CITY COUNCIL ORDINANCE FOR
ZONE CHANGE NO. 2009-02**

Page 2 of 4

1. The facts recited above are true and correct and are hereby incorporated herein.
2. The Zone Change of approximately 130 acres from Commercial Highway (CH) to R2, and approximately 25 acres to Commercial Highway (CH) is consistent with the policies, goals, objectives, densities and permitted uses identified in the General Plan, as amended.
 - a. *In the 2007 General Plan, Land Use element, approximately 130 acres of the land was designated as Medium Density Residential and approximately 25 acres was designated as Commercial Highway. On August 18, 2009, the City Council amended the General Plan to change the designation of the 155 acres of the property to Commercial Highway and adopted an ordinance rezoning approximately 155 acres from IND, General Industrial, to Commercial Highway (CH). The General Plan has been amended to restore the Medium Density Residential designation to approximately 130 acres, and the remaining 25 acres will retain the Commercial Highway designation. The zoning code has been amended to add a medium density residential category, R2. The proposed new zoning would zone approximately 130 acres as R2, a zoning classification that corresponds to the Medium Density Residential (MDR) designation in the General Plan. The remaining 25 acres will be zoned as CH, Commercial Highway. These designations were originally approved in the 2007 General Plan and analyzed in the 2007 General Plan Environmental Impact Report.*
 - b. *The proposed zone change is consistent with the General Plan as amended, including the Housing Element (as amended.) Although the City has not identified this site in its inventory, the land will now be zoned R2, which provides for densities between 5.1 and 12 dwelling units per acre.*
 - c. *The proposed zone change complies with the goals and objectives of the General Plan, in that the approval of this zone change will assist in achieving the development of a well-balanced and functional mix of commercial and residential land uses to diversify Calexico's economic base. As such, the project will assist the City in promoting a diversified economic base by attracting new residential development in close proximity to commercial, retail, and office uses into the City. With increased commercial development, there will be increased employment opportunities and transition from a predominately agricultural economy to a more urban economy. These diversified commercial uses will respond to equally diversified market demands both in the United States and Mexico.*
3. The proposed Zone Change No. 2009-02 will not be; a) detrimental to the health, safety, comfort or general welfare of the persons residing or working within the neighborhood of the proposed amendment or within the City, or b) injurious to the property or improvements in the neighborhood or within the City.

The proposed Zone Change has been analyzed relative to its potential to be

**CITY COUNCIL ORDINANCE FOR
ZONE CHANGE NO. 2009-02**

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detrimental to the health, safety, comfort and welfare of the persons residing or working within the neighborhood and area of the proposed Zone Change. Staff concluded that the project does not propose land uses, densities, or development patterns that will jeopardize the health and safety of the persons residing or working within the neighborhood of the property. Health, safety, and welfare will not be degraded as a result of rezoning the property consistent with the amended General Plan designations.

4. On May 1, 2007, by Resolution 07-83, the City Council certified an Environmental Impact Report, adopted a Statement of Overriding Considerations and adopted the 2007 General Plan Update. The proposed zoning amendments are consistent with, and implement, the land use designations and regulations identified in the 2007 General Plan and analyzed in the General Plan EIR. Therefore, pursuant to CEQA Guidelines sections 15162, 15168 and 15183, no further environmental review is required.

SECTION 2. **Severability.** If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications therefore which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

SECTION 3.

- A. Zone Change No. 2007-03 is repealed and, to the extent it conflicts with Zone Change 2009-02, shall have no further force or effect. City Council Ordinance No. _____ is hereby repealed.
- B. The Official Zoning Map of the City is amended to reflect Zone Change No. 2009-02, incorporated herein by reference, rezoning approximately 130 acres from Commercial Highway to R2, (Residential) and approximately 25 of the 155 acres as CH, Commercial Highway.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the City Council of the City of Calexico, California, held on the ____ day of __ February, 2010

City of Calexico

DAVID OUZAN, MAYOR

**CITY COUNCIL ORDINANCE FOR
ZONE CHANGE NO. 2009-02**

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ATTEST:

LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS
CITY OF CALEXICO)

I LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, CALIFORNIA DO
HEREBY CERTIFY THAT UNDER PENALTY OF PERJURY THAT THE FOREGOING IS A
TRUE AND CORRECT COPY OF ORDINANCE NO. _____ THAT WAS DULY AND
REGULARLY INTRODUCED AT A REGULAR MEETING OF SAID CITY COUNCIL HELD ON
January 19, 2010 AND WAS ADOPTED BY SAID CITY COUNCIL AT A REGULAR MEETING
HELD ON February ____, 2010, BY THE FOLLOWING VOTE

AYES:
NOES:
ABSENT:
ABSTAIN:

LOURDES CORDOVA, CITY CLERK

SEAL



Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, California 94104-1513
P 415.392.4200 F 415.392.4250

Sarah Ellen Owsowitz
415.262.5122
sowsowitz@coxcastle.com

December 1, 2009

File No. 60288

VIA E-MAIL AND U.S. MAIL

Mayor David B. Ouzan
Mayor Pro Tem John Moreno
Honorable Members of the City Council
608 Heber Avenue
Calexico, California 92231

Re: Request for Rescission of Calexico MegaPark Project Approvals

Mayor Ouzan, Mayor Pro Tem Moreno and Honorable Council Members:

As part of Calexico MegaPark LLC's ("MegaPark") ongoing efforts to respond and adapt to the dramatic changes in Imperial County and the Country's economy, MegaPark is currently evaluating a variety of options for the development of some, or all, of the 150 acres of land generally located on the southeast quadrant of Jasper Road and Highway 111, commonly referred to as the Calexico MegaPark Project. To that end, and in order to preserve maximum flexibility for MegaPark as it considers how best to move forward with proposals for the development of these lands, MegaPark hereby requests that the City of Calexico rescind the following Project-related approvals: General Plan Amendment No. 2007-10, Zone Change No. 2007-03, and Tentative Subdivision Map No. 2009-01.

Consistent with this, MegaPark also requests that the City decertify the Calexico MegaPark Environmental Impact Report No. 2009-01 (State Clearinghouse Number 2007031043) and rescind its approval the related Findings of Fact, Statement of Overriding Consideration, and Mitigation Monitoring and Reporting Program. It is MegaPark's understanding that the City Council will be able to commence rescission of these approvals at its first meeting of 2010, January 5, 2010.

MegaPark anticipates submitting new proposals for the development of some or all of its property in 2010, and looks forward to working with the City to ensure that this development becomes a contributing part of Calexico's vision for an innovative, environmentally responsible, and well-planned City.

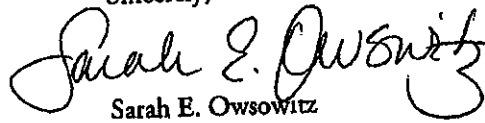
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Attachment 4

Mayor David B. Ouzan
December 1, 2009
Page 2

We thank the Council for its time and consideration of this request.

Sincerely,


Sarah E. Owsowitz

cc: Jennifer M. Lyon, City Attorney
Armando G. Villa, Director of Community Development

**PLANNING COMMISSION
AGENDA REPORT**

SUBJECT: CONSIDERATION TO (1) RESCIND ALL ENTITLEMENTS FOR THE MEGAPARK PROJECT; (2) AMEND THE GENERAL PLAN TO CHANGE THE LAND-USE DESIGNATION FOR THE MEGAPARK PROPERTY; AND (3) REZONE THE MEGAPARK PROPERTY TO BE CONSISTENT WITH THE GENERAL PLAN.

AGENDA DATE: January 4, 2010

PREPARED BY: Jennifer M. Lyon, City Attorney

RECOMMENDATION: Approve attached Resolution:

- Resolution of the Planning Commission of the City of Calexico Recommending that the City Council (1) Adopt a Resolution Decertifying EIR 2009-01 and Rescinding Approval of Tentative Subdivision Map 2009-01 for the Megapark Project; (2) Adopt a Resolution Amending the General Plan Land Use Designation for the Megapark Property; and (3) Adopt an Ordinance to Rezone the Megapark Property.

FISCAL IMPACT: N/A

ENVIRONMENTAL REVIEW: On May 1, 2007, by Resolution 07-83, the City Council certified an Environmental Impact Report, adopted a Statement of Overriding Considerations and adopted the 2007 General Plan Update. The proposed zoning amendment is consistent with, and implements the land use designations and regulations identified in the 2007 General Plan and analyzed in the General Plan EIR. Therefore, pursuant to CEQA Guidelines sections 15162, 15168 and 15183, no further environmental review is required. This action is being taken to rescind the land-use entitlement approvals for the Megapark development project, therefore this proposed action will have significantly less environmental effects than the formerly proposed development of approximately 155 acres of the Megapark project.

BACKGROUND INFORMATION: (Prior action/information)

Calexico Mega Park, LLC, on August 18, 2009, obtained approvals and entitlements to develop a mixed commercial project on APNs 059-001-002 and 059-001-003. On December 1, 2009, Calexico Mega Park, LLC requested the City rescind all approvals and entitlements for the Mega Park project including: the decertification of EIR 2009-01; rescinding General Plan Amendment 2007-10; rescinding Zone Change 2007-03; and vacating its approval of Tentative Subdivision Map 2009-01.

DISCUSSION (Current consideration):

The action before the Planning Commission is to consider and recommend approval of the attached resolutions and ordinance which will have the effect of completely

Attachment 5

rescinding all entitlements that were previously granted to the Megapark project. The proposed actions would also restore the previous General Plan land use designation that Megapark held prior to August 18, 2009. Further, the proposed rezone via an ordinance will properly zone the Megapark land to be in conformance with the former land use designations of Commercial Highway (approximately 25 acres) and Medium Density Residential (approximately 130 acres). Any proposed future development on the site would require appropriate environmental review and land use approvals.

1. EIR.

The Planning Commission is asked to recommend that the City Council approve the attached draft resolution that would have the effect of de-certifying the EIR.

2. Tentative Subdivision Map.

The Planning Commission is asked to recommend that the City Council approve the attached draft resolution that would have the effect of rescinding the tentative subdivision map and conditions of approval that were created on August 18, 2009 for the Megapark project. Once approved, the only condition of the former resolution that would remain is the obligation that the Megapark applicant defend and indemnify the City of Calexico from any lawsuits related to the project, including this current action to rescind the project entitlements.

3. General Plan Amendment.

The Planning Commission is asked to recommend that the City Council approve the attached draft resolution that would have the effect of rescinding General Plan Amendment 2007-10 that changed the land use designation on approximately 130 acres of the Megapark site from Medium Density Residential ("MDR") to Commercial Highway ("CH"). The proposed resolution would further restore the former land use designation so that approximately 130 acres are designated as MDR and approximately 25 acres are designated as CH. The proposed land use designations are consistent with the General Plan and EIR that were approved in 2007 by the City.

Section 65358(a) of the Government Code provides that no mandatory element of a General Plan shall be amended more frequently than four times during any calendar year and this proposed General Plan Amendment No. 2009-02 constitutes the first amendment to a mandatory element of the City's General Plan for calendar year 2010.

4. Zone Change.

Prior to the August 18, 2009 project approvals, the Megapark land which is approximately 155 acres of land generally located on the southeast quadrant of Jasper Road and Highway 111 further described as APNs 059-001-002 and 059-001-003 was zoned IND, General Industrial which is different from the land use designation in the General Plan. On August 18, 2009, Council took action to rezone all 155 acres to CH, Commercial Highway. With the request to rescind all project entitlements, the rezone to CH will also be rescinded. To make the zoning consistent with the General Plan land use designation, the proposed ordinance will rezone the 155 acres from CH to 25 acres as CH and 130 acres as R-2. The R-2 zone was created to implement the General Plan land use

designation of MDR. Therefore, once Council takes action to approve all attached resolution and the ordinance, the Megapark land will have a land use and zoning designation which are consistent with the General Plan.

The proposed General Plan Amendment and Zone Change are consistent with the General Plan and the Housing Element. The City Council adopted the 2007 General Plan Update by Resolution No. 07-83 on May 1, 2007. The General Plan discusses a land use category called Medium Density Residential and designates certain land within the City (including the Megapark land) within such category. The proposed actions will restore the Megapark land to the land use designation that existed prior to August 18, 2009 and zone the land consistent with such designations.

- **Recommendation:** It is recommended that the Planning Commission approve the attached Resolution of the Planning Commission of the City of Calexico Recommending that the City Council (1) Adopt a Resolution Decertifying EIR 2009-01 and Rescinding Approval of Tentative Subdivision Map 2009-01 for the Megapark Project; (2) Adopt a Resolution Amending the General Plan Land Use Designation for the Megapark Property; and (3) Adopt an Ordinance to Rezone the Megapark Property.

Attachments:

- 1. 12/1/09 Letter from Megapark**
- 2. Planning Commission Resolution**
- 3. City Council Resolution re: Decertification of EIR and Tentative Map**
- 4. City Council Resolution re: General Plan Amendment**
- 5. City Council Ordinance re: Zone Change**

Agenda Item No. _____
Page _____ Of _____

RESOLUTION NO. 2010-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALEXICO, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL RESCIND APPROVALS RELATED TO THE CALEXICO MEGA PARK PROJECT AND AMEND THE GENERAL PLAN AND ZONING DESIGNATION FOR THE PROPERTY TO RESTORE THE MEDIUM DENSITY RESIDENTIAL DESIGNATION TO APPROXIMATELY 130 ACRES OF LAND ON APNs 059-001-002 AND 059-001-003.

WHEREAS, on August 18, 2009, Calexico Mega Park, LLC, obtained approvals and entitlements to develop a mixed commercial project on APNs 059-001-002 and 059-001-003; and

WHEREAS, Calexico Mega Park, LLC has requested the City rescind all approvals and entitlements for the Mega Park project; and

WHEREAS, the City Council certified Environmental Impact Report 2009-01 related to the project on August 18, 2009; and

WHEREAS, the approvals included General Plan Amendment 2007-10, Zone Change 2007-03 and Tentative Subdivision Map 2009-01; and

WHEREAS, amendments to the General Plan and zoning map are required in order to implement the requested actions; and

WHEREAS, the Planning Commission conducted a duly noticed a public hearing on January 4, 2010, at which time all persons desiring to be heard appeared and gave testimony and written evidence was submitted into the record of proceedings in support of the Planning Commission's action; and

WHEREAS, the Planning Commission considered proposed Resolutions of the City Council vacating the prior approvals, approving a General Plan amendment and an Ordinance rezoning the property to R2.

NOW THEREFORE, the Planning Commission of the City of Calexico DOES HEREBY RESOLVE as follows:

1. The Planning Commission has considered the following Resolutions and Ordinances:
 - a. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DECERTIFYING EIR 2009-01 AND RESCINDING APPROVAL OF TENTATIVE SUBDIVISION MAP 2009-01 RELATED TO THE CALEXICO MEGA PARK PROJECT LOCATED ON APPROXIMATELY 155 ACRES OF LAND (APNs 059-001-002 AND 059-001-003), attached hereto and incorporated herein as Exhibit A;
 - b. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT NO. 2009-02 TO DESIGNATE APPROXIMATELY 130 ACRES OF LAND ON APNs 059-001-

PLANNING COMMISSION RESOLUTION NO. 2010-02
RESOLUTIONS AND ZONING ORDINANCE
RELATED TO MEGA PARK
Page 2 of 4

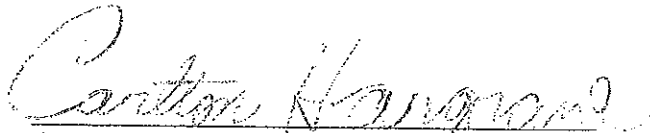
002 AND 059-001-003 AS MEDIUM DENSITY RESIDENTIAL (MDR), attached hereto and incorporated herein as Exhibit B.

- c. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, RESCINDING ZONE CHANGE NO. 2007-03 AND APPROVING ZONE CHANGE NO. 2010-02, REZONING 130 ACRES FROM COMMERCIAL HIGHWAY TO R2, A MEDIUM DENSITY RESIDENTIAL CATEGORY AND ZONING APPROXIMATELY 25 ACRES AS COMMERCIAL HIGHWAY, attached hereto and incorporated herein as Exhibit C.

2. The Planning Commission hereby makes and adopts the findings contained in Exhibits A-C as if the findings were separately set forth herein.

NOW, THEREFORE, BE IT FURTHER RESOLVED, based on the above findings, the Planning Commission of the City of Calexico DOES HEREBY RECOMMEND that the City Council of the City of Calexico:

- a. Adopt the Resolution attached as Exhibit A, decertifying EIR 2009-01 and rescinding approval of Tentative Subdivision Map 2009-01; and
- b. Adopt the Resolution attached as Exhibit B, rescinding General Plan Amendment 2007-10 and approving General Plan Amendment 2009-02, designating approximately 130 acres of land located on APNs 059-001-002 and 059-001-003, as Medium Density Residential; and
- c. Adopt the Ordinance attached as Exhibit C, rescinding Zone Change 2007-03 and rezoning approximately 130 acres of land located on APNs 059-001-002 and 059-001-003 from Commercial Highway to R2.


Carlton Hargrave, Chairperson
Calexico Planning Commission

Attachments:

Exhibit A: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DECERTIFYING EIR 2009-01 AND RESCINDING APPROVAL OF TENTATIVE SUBDIVISION MAP 2009-01 RELATED TO THE CALEXICO MEGA PARK PROJECT LOCATED ON APPROXIMATELY 155 ACRES OF LAND (APNs 059-001-002 AND 059-001-003).

PLANNING COMMISSION RESOLUTION NO. 2010-02
RESOLUTIONS AND ZONING ORDINANCE
RELATED TO MEGA PARK
Page 3 of 4

Exhibit B: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT NO. 2009-02 TO DESIGNATE APPROXIMATELY 130 ACRES OF LAND ON APNs 059-001-002 AND 059-001-003 AS MEDIUM DENSITY RESIDENTIAL (MDR).

Exhibit C: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, RESCINDING ZONE CHANGE NO. 2007-03 AND APPROVING ZONE CHANGE NO. 2009-02, REZONING 130 ACRES FROM COMMERCIAL HIGHWAY TO R2, A MEDIUM DENSITY RESIDENTIAL CATEGORY AND ZONING APPROXIMATELY 25 ACRES AS COMMERCIAL HIGHWAY.

I hereby certify that the preceding resolution was taken by the Planning Commission at a special meeting conducted on January 4, 2010 by the following vote:

AYES: Commissioners: Hargrave, Higuera, Rodriguez, Cardenas

NOES: Commissioners: Lopez

ABSENT: Commissioners:

ABSTAIN: Commissioners:

ATTEST:



Armando G. Villa
Secretary - Director